IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21726 of 2005
To
SPECIAL CIVIL APPLICATION No. 21748 of 2005
With
SPECIAL CIVIL APPLICATION No. 21749 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

==========

BARODA PEOPLES CO-OP BANK LTD (IN LIQUIDATION) - Petitioner(s)

Versus

MUKESH SHAH (PRESIDENT OF TRUST) & 4 - Respondent(s)

==========

Appearance :

MR AJ YAGNIK for the Petitioner,

MR MUKESH SHAH, Trustee, Secretary for Helpline Consumer Association : Respondents No.s. 1 & 2.
MR AMAR BHATT for Respondent No. 3

MR. HD DAVE, AGP for Respondent No.4

Respondent No.5 served

==========

CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 23/11/2005

ORAL JUDGMENT

1. The present petitions have been preferred against the orders passed by the District Consumer Disputes Redressal Forum dated 02/08/2004 as well as order dated 12/01/2005 passed in Execution Application followed by the action of the Respondent District – Collector.

2. Learned Counsel for the petitioner submitted that the petitioner Co-operative Bank was ordered to be wound up by order dated 27/05/2004 passed by the Registrar, Cooperative Societies under Section 107 of the Gujarat Cooperative Societies Act, 1961 and therefore, as per Section 166 of the Gujarat Co-operative Societies Act, 1961, the District Consumer Forum has no power, jurisdiction and authority to pass the impugned orders dated 02/08/2004 and dated 12/01/2005. The leave of the Registrar, Co-operative Societies was never obtained while proceeding with the complaint filed by the Respondent. In view of the provisions of Section 166 (2) of the Act, 1961 to be read with Section 111 and Section 112, the impugned orders dated 02/08/2004 and 12/01/2005 deserves to be quashed and set aside.

3. It is also vehemently submitted by the learned Counsel appearing for the petitioner that the Reserve Bank of India has passed order dated 17/05/2004 in

exercise of powers under Section 22 to be read with Section 56 of the Banking Regulations Act, 1949 not to make repayment of the deposits with immediate effect (Annexure – A to the memo of the petition). As per provisions of Section 46(4) to be read with Section 47(A) of the Banking Regulations Act, 1949, if there will be breach of directions given by Reserve Bank of India, the petitioner – Bank can be saddled with penalty and prosecution. It is also submitted by the learned Counsel for the petitioner, that after the order of winding up passed by the Registrar, Cooperative Societies dated 27/05/2004 and after the appointment of the Liquidator of the petitioner – Cooperative Bank, the District Consumer Disputes Redressal Forum ought not have been proceeded with more particularly when neither the Liquidator of the petitioner-Bank was joined as party – respondent nor leave of the Registrar was obtained and therefore, also the impugned orders deserves to be quashed and set aside.

4. It is also pointed out by learned Counsel for the petitioner that apart from aforesaid legal submissions, the fact remains that Respondent No.3 has made payment of Rs. 48,14,81,124.57 paise to the petitioner. This amount shall be distributed to the depositors including the respondent depositors without causing any delay.

Nonetheless, the Bank claims out of total Rs. 68 Crores remaining amount from Respondent No.3. In fact Respondent No.3 ought to have made payment of Rs. 68 Crores to the petitioner – Bank as per submission made by the Counsel for the petitioner bank.

5. I have heard learned Counsel for Respondent No.3 who has submitted that Respondent No.3 is not liable for the amount as claimed for in the memo of the petition. Respondent No.3 has already made payment of Rs. 48,14,81,124.57 (Rupees Forty Eight Crore Fourteen lakhs Eighty One Thousand One Hundred Twenty Four and paise Fifty Seven) to the petitioner – Bank. A detailed letter has also been addressed by Respondent No.3 dated 31/10/2005, copy thereof is tendered to this Court and it is taken on record. It is also submitted by the learned Counsel for Respondent No.3 that as per provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, Respondent No.3 is not liable for Rs. 68 Crores, the amount as stated hereinabove have been forthwith paid to the petitioner – Bank for its distribution.

6. I have heard Mr. Mukesh Shah, who is Trustee of Help Line Consumer Association for and on behalf of Respondent

Nos. 1 and 2, who has mainly submitted that Respondent Nos.1 and 2 will be satisfied, if promptly the petitioner is refunding the money which has been deposited by the depositors. The amount paid by Respondent No.3 ought to be distributed to the depositors without causing any delay. Respondent Nos.1 and 2 will be satisfied if the principal amount and interest is paid which is due up to 22/05/2004 i.e. up to the date of the order of winding up passed by the Registrar, Cooperative Societies.

7. I have heard learned A.G.P. who has tendered affidavit-in-reply on behalf of Respondent No.4 and submitted that Collector has acted in pursuance of the order passed by the District Consumer Disputes Redressal Forum, Vadodara.

8. In view of the aforesaid submissions, looking to the facts of the case, provisions of the Acts which are referred below and the judicial pronouncements which is cited herein below, I hereby quash and set aside the orders passed by the District Consumer Disputes Redressal Forum , Vadodara dated 02/08/2004 as well as order dated 12/01/2005 especially for the following facts and reasons:

(i) The petitioner-Bank is Bank whose license has been canceled under the Banking Regulations Act, 1949, under Section 22 thereof by the Reserve Bank of India (Annexure – A to the memo of the petition), thus, it has become defunct Bank as per section 2(ff) of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. Reserve Bank of India has already passed order dated 17/05/2004 whereby direction was given to stop conducting 'banking business' within the meaning of Section 5(b) of the Act, 1949, including acceptance and repayment of deposits, with immediate effect.

(ii) The petitioner – Bank has been ordered to be wound up by Registrar, Cooperative Societies vide order dated 27/05/2004 under Section 107 of the Gujarat Cooperative Societies Act, 1961. Official Liquidator has also been appointed under Section 108 of the Gujarat Cooperative Societies Act, 1961. Admittedly, Official Liquidator was not joined as party – Respondent, before the District Consumer Disputes Redressal Forum, Vadodara.

(iii)As per Section 166 of the of the Gujarat Cooperative Societies Act, 1961, when the petitioner-society is woundup "no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar. Looking to the facts of the present case there is clear breach of section 166(2) of the Gujarat Cooperative Societies Act, 1961. No such leave of Registrar, Cooperative Societies has been obtained prior to final adjudication of the complaint before the District Consumer Redressal Forum. Looking to the provisions of the Gujarat Cooperative Societies Act, 1961 to be read with Banking Regulation Act, 1949 to be read with the Deposit Insurance and Credit Guarantee Corporation Act, 1961, the provisions are so inter woven with each other that leave of the Registrar of the Cooperative Society is required to be obtained prior to institution (in subsequent complaints) or (in cases where complaints have already been filed prior to winding up order) prior to final adjudication of

the complaint against the wound up Cooperative Bank. Winding up of the Cooperative Bank has several liabilities and several are priorities. The business of bank is such a complex business that not only with a view to initiate such business, the license is necessary, but there can also be condition which may be imposed by Reserve Bank of India, in view of the provisions of the Banking Regulation Act, 1949, even while canceling the license, granted, for carrying on the banking activities. As stated in Annexure – A to the memo of the petition vide order dated 17/05/2004, the Reserve Bank of India has imposed condition not to make repayment of deposits. This aspect of the matter has not been appreciated at all by the District Consumer Disputes Redressal Forum. Section 166 of the Gujarat Cooperative Societies Act, 1961 reads as under:

“166. Bar of jurisdiction of courts:-

1. Save as expressly provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of-

a) the registration of a society or its bye-laws, or the amendment of its bye-laws, or the dissolution of the committee of a society, or the management of the society on dissolution thereof; or

b) any dispute required to be referred to the Registrar, or his nominee, or board of nominees, for decision;

c) any matter concerned with the winding up and dissolution of a society.

2. While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the society or any member thereof, or any matter touching the affairs of the society, except by leave of the Registrar, and subject to such terms as he may impose.

3. All orders, decisions or awards passed in accordance with this Act or the rules, shall, subject to the provisions for appeal or revision in this Act be final; and no such order, decision or award shall be liable to be challenged, set aside, modified, revised or declared void in any Court upon the merits, or upon any other ground whatsoever except for want of jurisdiction."

Looking to the words used in Sub-section (2) of Section 166 mainly "other legal proceedings relating to the business of such society" as well as "any matter touching the affairs of the society" includes the complaint pending before the District Consumer Disputes Redressal Forum. Sub-section (1) of Section 166 narrates the Civil or Revenue Court whereas Sub-section (2) of Section 166 narrates the proceedings or suit relating to the business of such society.

Sub-section (2) of Section 166 takes in its sweep the complaints pending before the District Consumer Disputes Redressal Forum. It is also submitted by learned Counsel appearing for the petitioner that the word “suit” as used in Sub-section (2) of Section 166 includes the complaints before the District Consumer Disputes Redressal Forum. More so, as per the judgment delivered by the Hon'ble Supreme Court of India in ***Patel Roadways Ltd. v. Birla Yamaha Ltd. Reported in AIR 2000 Supreme Court 1461,*** paragraph 49 reads as under:

> *“49. From the above it is clear that the term “suit” is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. The meaning of the term “suit” also depends on the context of its user which in turn, amongst other things, depends on the Act or the Rule in which it is used. No doubt the proceeding before a National Commission is ordinarily a summary proceeding and in an appropriate case where the Commission feels that the issues raised by the parties are too contentious to be decided in a summary proceedings it may refer the parties to a civil Court. That does not mean that the proceeding before the Commission is to be decided ignoring the express statutory provisions of the Carriers Act (S.9) in a proceeding in which a claim is made against a common carrier as defined in the said Act. Accepting such a contention would defeat the object and purpose for which the Consumers Protection Act was enacted. A proceeding before the National Commission, in our considered view, comes within the term “suit”. Accordingly we*

reject the contention raised by Shri Ashok Desai in this regard.“

In view of the aforesaid judgment, the proceeding pending as on the date of order of liquidation before the District Consumer Disputes Redressal Forum is covered by Sub-Section (2) of Section 166 of the Gujarat Cooperative Societies Act, 1961, which makes it obligatory for the Consumer Disputes Redressal Forum, to check whether complainant has obtained leave of the Registrar of Cooperative Societies prior to final adjudication of the complaint against Co-operative Bank which is wound up.

9. As a cumulative effect of the aforesaid facts and reasons and judicial pronouncements and the statutory provisions, the orders passed by the District Consumer Disputes Redressal Forum, Vadodara dated 12/08/2004 in the complaint as well as order dated 12/01/2005 passed in Execution Application are hereby quashed.

10. Looking to the further affidavit-in-reply filed by

the petitioner, it is stated for the petitioner that the petitioner has received seizable amount of Rs. 48,14,81,124.57 (Rupees Forty Eight Crore Fourteen Lakhs Eighty One Thousand One Hundred Twenty Four and paise Fifty Seven) from Deposit Insurance and Credit Guarantee Corporation i.e. Respondent No.3. The said amount will be distributed by the petitioner to the depositors as expeditiously as possible preferably within period of two weeks from today. The petitioner will also make payment of the principal amount plus interest to the depositors which is due up to 27/05/2004, as paid by Deposit Insurance and Credit Guarantee Corporation i.e. Respondent No.3. I hereby, direct the petitioner- Bank to distribute the amount received from Respondent No.3 to respondent- depositors within period of eight weeks from today. Keeping in mind urgency of few depositors, whose names will be supplied by Respondent No.1. and those who are sick and disable, (Respondent No.1 has stated that there are approximately 15 such applications), the petitioner shall make the payment to such depositors earlier. This will be treated as precedent for rest of the depositors. It is also submitted by the learned Counsel for the petitioner that the depositors will get the principal amount plus interest up to 27/05/2004 i.e. up to date of winding up order date of the Cooperative

Societies. In view of the aforesaid observations and directions, Rule made absolute to the aforesaid extent. The impugned orders dated 02/08/2004 passed in complaint and 12/01/2005 passed in Execution Application by the District Consumer Disputes Redressal Forum, Vadodara are hereby quashed and set aside. Rule made absolute in all the petitions. No order as to costs. The petitioner – Bank shall make the payment to the respondent- depositors received from the respondent DICGC. As the impugned orders are quashed, and all the consequential actions are also quashed.

11. Learned Counsel for the petitioner has submitted that the petitioner is not pressing for any relief in prayer against Respondent No.3 at this stage, and therefore, the same is not adjudication upon this Court.

[D.N.PATEL, J.]

satishcv